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IN THE

Supreme Court of the United States

OCTOBER TERM, 1945.

No. 775

FREDERIC W. PROCTER,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

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Pro Se.

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To the Honorable, the Supreme Court of the United States:

Summary Statement of Matter Involved.

Your petitioner, Frederic W. Procter, praying for a writ of certiorari to review a decision in the United States Circuit Court of Appeals for the Fourth Circuit, respectfully submits:

This is a gift tax case. On January 13, 1939 petitioner executed an Indenture of Trust, appearing on page 22 of the Transcript of Record. This Trust Indenture recited that petitioner was the owner of certain future interests

under the *inter vivos* trust established by petitioner's grandfather, Harley T. Procter, on December 29, 1914 and under the testamentary trust established by Article Sixth of the Last Will and Testament of Harley T. Procter which was probated in New York County on June 4, 1920 (R. 22-3).

Petitioner's mother, Lillian S. Procter, was granted a life estate under both the *inter vivos* trust and the testamentary trust; and Lillian S. Procter was living on the date said trust indenture was made on January 13, 1939 (and is still living) (R. 42). Under the *inter vivos* trust, the amount of petitioner's future interest was entirely dependent upon the number of children of Lillian S. Procter (including petitioner) who might be living on the date of her death (R. 33-5).

Petitioner's future interests under both trusts were pledged as collateral security to petitioner's *demand* notes totaling $686,300.03 held by his mother (R. 1). On June 1, 1942 petitioner's mother demanded payment of his $686,300.03 promissory notes (R. 2); and on November 12, 1942 petitioner sued to restrain foreclosure of his future interests which were pledged to secure these notes (R. 2, 83). On August 7, 1945 the Superior Court of Berkshire County, Commonwealth of Massachusetts, rendered an opinion in petitioner's suit to restrain foreclosure of his future interests which were pledged to secure his $686,300.03 promissory notes, in which opinion it was held that petitioner's mother, Lillian S. Procter, had the right to foreclose these notes and to sell petitioner's future interests under both said *inter vivos* trust and said testamentary trust and to apply the proceeds of such sale upon said notes (R. 84-9).

On August 28, 1945 a final decree pursuant to said opinion was entered in the State Court of Massachusetts (R. 83); and on September 26, 1945 Lillian S. Procter served a "Notice of Sale" of all of petitioner's future interests under said *inter vivos* trust and said testamentary trust, said sale to be held on October 5, 1945 (R. 90). (Although it does not appear in the record in this cause, said sale was actually held on October 5, 1945 and petitioner's entire future interests under both said trusts were purportedly sold to a buyer at said sale represented by Arthur Windels, a New York attorney.)

By the foregoing Trust Indenture petitioner, "in consideration of his love and affection for his children and his desire to provide for their future" and other considerations, irrevocably transferred, assigned and conveyed to three trustees "*so much* of all his right, title and interest in and to the trust fund and remainder created by" said *inter vivos* and testamentaryy trusts "as *will remain* (a) after the satisfaction and payment of the indebtedness to Lillian S. Procter represented by the aforementioned seven notes" held by petitioner's mother totaling $686,300.03 (R. 24).

Out of the foregoing future interests of petitioner under said *inter vivos* and testamentary trusts, petitioner first retained a life estate under the foregoing Trust Indenture, and petitioner then granted and conveyed to his two children and others the remainder interest under said Trust Indenture which constitutes the alleged gift in this case (R. 24-5).

Under Article Ninth the Trust Indenture was made irrevocable; and under Article Twelfth the Trust Indenture was to be "in all respects governed, construed and regulated by the laws of the State of New York" (R. 30-1).

The stipulated value of the corpus of each of the two trusts on the date of the transfer was $928,593.70 in the *inter vivos* trust and $961,551.68 in the testamentary trust (R. 2, 57).

Petitioner and respondent stipulated before The Tax Court of the United States to certain actuarial factors from which it was possible to determine that PROVIDED (1) petitioner was the only child of his mother on the date of her death and PROVIDED (2) that petitioner's $686,300.03 promissory notes were not foreclosed by his mother in her lifetime, the value on January 13, 1939 of petitioner's future interests under both the *inter vivos* and testamentary trusts was either $165,016.95 or $166,400.58 (R. 72, 80).

Said valuation failed to take into account the two essential factors (a) that petitioner's mother, Lillian S. Procter, might die leaving another child or children than petitioner, and (b) that petitioner's mother, Lillian S. Procter, might foreclose on his $686,300.03 notes in her lifetime. Since the gift under the *inter vivos* trust was to the class of persons described as all of Lillian Procter's children living on the date of her death or their descendants, it was an impossibility for The Tax Court of The United States (or anyone else) to place any actuarial or other valuation upon this contingency. It was equally impossible for The Tax Court of the United States, or anyone else, to determine by any actuarial or other means the effect upon petitioner's future interests under both said *inter vivos* and testamentary trusts of (1) a foreclosure by his mother, Lillian S. Procter, of petitioner's $686,300.03 promissory notes and (2) a sale of petitioner's future interests in connection with the foreclosure.

Accordingly, and in conformity with the foregoing, petitioner and the Commissioner of Internal Revenue, as respondent, by their respective attorneys, entered into *a further stipulation of facts* under which it was specifically provided, as follows:

> "8. That no actuarial or other recognized method exists to determine the following:
>
> "(a) Whether Lillian S. Procter will or will not foreclose on the security pledged under petitioner's $686,300.03 notes during her lifetime.
>
> "(b) Whether the fair market value of the corpora of the two trusts created by Harley T. Procter on December 29, 1914 by Article Sixth of his Last Will and Testament will or will not exceed the sum of $686,300.03 upon the date upon which Lillian S. Procter forecloses on said security pledge or dies.
>
> "(c) What will be the fair market value of the corpora of said two trusts, if any, after the petitioner's notes of $686,300.03 are satisfied and paid, in fact.
>
> "(d) Whether Lillian S. Procter will die leaving children other than Frederic W. Procter or grandchildren other than Frederic W. Procter, Jr. and Patricia Marise Procter" (R. 2-3, 75-6).

Statement of Basis of this Court's Jurisdiction.

The decision of the Circuit Court of Appeals for the Fourth Circuit in this case affirming the decision in The Tax Court of the United States, directly conflicts upon a question of Federal law with the provisions of Sections 501, 502 and 506 of the Revenue Act of 1932 as Amended and Article 19 of Treasury Regulations 79 and Section 86.19 of Treasury Regulations 108, as well as with the decision of this Court in *Robinette* v. *Helvering*, 318 U. S. 184.

The Question Presented.

There is only one question presented:

Is the gift of a part of a donor's future interest, which future interest itself cannot be valued and *therefore has no fair market or other value of any kind or nature whatsoever in the donor's hands,* subject to the Federal gift tax?

Reasons for the Allowance of the Writ.

Until the decision in this case, Sections 501, 502 and 506 of the Revenue Act of 1932 as Amended, which specifically provide that a gift to be subject to the gift tax must have some "value" in fact, have invariably been construed to provide that the conveyance of all or part of future interests which are subject to such contingencies as to be without any possible valuation by any actuarial or other recognized method *in the hands of the donor,* are not intended to be subject to the gift tax. This clearly appears from the provisions of Section 506 of the Act which specifically provides:

> "If the gift is made in property, the *value* thereof at the date of the gift *shall be considered the amount of the gift"* (26 U. S. C. A., Sec. 1005) (Italics added),

and from the opinion of Mr. Justice Black in the case of *Robinette* v. *Helvering,* 318 U. S. 184.

Article 19 of Treasury Regulations 79 and Section 86.19 of Treasury Regulations 108* both provide that the "value" of gifts of property, as the word is used in the Revenue Act, means "the price" at which the property would "change hands" between a willing buyer and a willing seller. Property, however, which in fact has no "value"

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* See Appendix at page 17 below.

at all can have no "price" within the meaning of the Act, and as this Court has held in *Guggenheim* v. *Rasquin*, 112 U. S. 254, the Regulations cannot change the meaning of the word "value" in the Act itself.

It therefore amply appears that the decision of the Circuit Court of Appeals for the Fourth Circuit in this case is *directly in conflict upon a question of Federal law* with Sections 501, 502 and 506 of the Revenue Act of 1932 as Amended and with the decisions of this Court in the *Robinette* and *Guggenheim* cases.

The question involved in this case is most important. If taxpayers are to be subject to a gift tax upon transfers of all or part of future interests *which have themselves no computable or ascertainable value whatever in the hands of the donor* and if the principle laid down by Mr. Justice Black in the *Robinette* case is to be ignored in the Circuit Courts of Appeal, it should only be upon a square decision by this Court to that effect.

This case is *not* one in which *the donor* by the terms of his gift has himself imposed conditions thereon which render the amount of the gift to the donee of no computable or ascertainable value. The *Robinette* case appears to be a square decision in this Court holding such a gift to be taxable at the full value of the gift to the donor. In this case, on the contrary, the property given had no computable or ascertainable value *in the hands of the donor.*

The reason why this case is so important to all tax-payers is that in this case the future interests a part of which was the subject of the gift were *without computable or ascertainable value in fact in the hands of the donor, as stipu-*

lated by the Commissioner himself at the trial in the Tax Court. Until the decision in the Circuit Court of Appeals in this case, the Commissioner has never sought to levy a gift tax upon property which the Commissioner has himself stipulated was in the donor's hands without any computable or ascertainable value whatsoever.

WHEREFORE petitioner prays that a writ of certiorari be issued under the seal of this Court, directed to the United States Circuit Court of Appeals for the Fourth Circuit, commanding said Court to certify and send to this Court on a day to be designated, the full and complete transcript of the record and of the proceedings of said Circuit Court of Appeals had in said cause, to the end that this cause may be reviewed and determined by this Honorable Court as provided by the Statutes of the United States; that said final order of said Circuit Court of Appeals be reviewed or altered by this Honorable Court; and petitioner also prays for such other, further or different relief as may seem proper.

And this petitioner will ever pray, etc.

FREDERIC W. PROCTER,
Pro Se.

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Of Counsel.